

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARIO ORTEGA,)
Plaintiff,)
v.) Cause No. 4:18-cv-01576-DDN
CITY OF SAINT LOUIS, MISSOURI, et al.,)
Defendants.)

**MEMORANDUM IN SUPPORT OF
MOTION TO ENFORCE SETTLEMENT AGREEMENT**

Plaintiff moves to enforce the settlement agreement and requests attorneys' fees and costs for having to file this motion. In support of this motion, Plaintiff states the following:

1. On April 11, 2022, the parties conducted a mediation in this case and reached an agreement with the assistance of the Court-appointed mediator.
2. On August 15, 2022, the parties finally executed a settlement agreement memorializing the terms of the agreement reached by the parties at the mediation.
3. Pursuant to the settlement agreement, City agreed to send payment "within thirty (30) calendar days of the parties executing this agreement."
4. The payment was due on September 14, 2022.
5. Plaintiff has not received the payment.
6. On September 16, 2022, during a mediation in a related case, Plaintiff's counsel asked the same Court-appointed mediator to ask Defendants about the status of the settlement check given that the same mediator was involved in the resolution of this case. Defendants' counsel refused to discuss the matter with the mediator.

7. Despite Plaintiff's request, Defendants have not provided any updates regarding the status of the outstanding payment.

ARGUMENT

It is well settled that a federal court that maintains jurisdiction over a settled action and possesses the inherent power to enforce agreements entered in settlement of litigation pending before it. *Oliveira v. Martins*, No. CV 14-00482, 2017 WL 5495788, at *2 (E.D. La. Oct. 31, 2017), *report and recommendation adopted sub nom. Oliveira v. Ionia Maria Martins & Brazilian Grill, LLC*, No. CV 14-482, 2017 WL 5483771 (E.D. La. Nov. 15, 2017) (citing *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994); *Eastern Energy, Inc. v. Unico Oil & Gas, Inc.*, 861 F.2d 1379, 1380 (5th Cir. 1988)).

The Court has the authority to order payment of sums owed under a settlement agreement. *Fee v. Great Bear Lodge of Wisconsin Dells, LLC*, No. CIV. 03-3502 PAMRLE, 2005 WL 1323162, at *2 (D. Minn. Mar. 3, 2005). A court may also award attorneys' fees and costs to a party that must resort to filing a motion to enforce settlement agreement. *Oliveira v. Martins*, No. CV 14-00482, 2017 WL 5495788, at *2. A court also has the authority to find a party in contempt if the party fails to make payment after the court ordered it do so. *Fee v. Great Bear Lodge of Wisconsin Dells, LLC*, No. CIV. 03-3502 PAMRLE, D.E. 150 (D. Minn. February 16, 2005) (issuing order to show cause for failing to make settlement payment).

Pursuant to the terms of the settlement agreement, Plaintiff has already discharged his claims against the City. Defendants, however, have failed to fulfill their end of the bargain and are in breach. Plaintiff respectfully requests the Court to enter an order compelling Defendants to deliver the full payment to undersigned counsel no later than September 23, 2022, and to award Plaintiff attorneys' fees and costs for the filing of this motion. If Defendants fail to make that

payment, Plaintiff respectfully requests the Court to issue order demanding Defendants show cause why they should not be held in contempt.

Date: September 19, 2022

Respectfully submitted,

KHAZAEI WYRSCH LLC

/s/ James R. Wyrsch

Javad Khazaeli, 53735MO
James R. Wyrsch, 53197MO
911 Washington Avenue, Suite 211
Saint Louis, MO 63101
(314) 288-0777
(314) 400-7701 (fax)
javad.khazaeli@kwlawstl.com
james.wyrsch@kwlawstl.com

CAMPBELL LAW, LLC
Alicia Campbell, MO59586
3407 S. Jefferson Avenue
Saint Louis, MO 63118
888-588-5043
314-400-7701 (fax)
alicia@campbelllawllc.com

Attorneys for Plaintiff